

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte ALAN J. WECKER

---

Appeal No. 96-2021  
Application 08/004,016<sup>1</sup>

---

ON BRIEF

---

Before JERRY SMITH, FLEMING and TORCZON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 29-38, which

---

<sup>1</sup> Application for patent filed January 15, 1993.

constituted all the claims remaining in the application. An amendment after final rejection was filed on April 24, 1995 and was entered by the examiner. This amendment amended claims 29 and 34, cancelled claims 31-33 and 36-38, and added claims 39 and 40. Consequently, this appeal is directed to the rejection of claims 29, 30, 34, 35, 39 and 40.

The claimed invention pertains to a method and apparatus for providing hypertext link services within a data processing system. More particularly, the invention is directed to the display of a marker along with a hypertext link indicator which indicates whether the information associated with the hypertext link indicator has previously been displayed. The date and time of a previous utilization of the information associated with the link indicator can be displayed by actuating the marker on the display without having to display the information associated with the link indicator.

Representative claim 29 is reproduced as follows:

29. A method of providing hypertext link services within a data processing system having a display, said method comprising the data processing implemented steps of:

displaying a hypertext document within said display;

graphically displaying at least one hypertext link indicator within said hypertext document, said hypertext link indicator indicating an existence of an additional unit of information;

Appeal No. 96-2021  
Application 08/004,016

graphically displaying in association with said at least one hypertext link indicator within said hypertext document a marker indicating a previous display of said additional unit of information;

selectively displaying said additional unit of information within said display in response to a selection of said hypertext link indicator by a user of said data processing system; and

selectively displaying utilization data indicating a date and time of a first utilization by said user with respect to said additional unit of information within an information window within said display in response to a selection of said marker by a user of said data processing system, wherein said utilization data may be visually accessed by a user without display of said additional unit of information.

The examiner relies on the following reference:

Nielsen, "The Art of Navigating Through Hypertext," Communications of the ACM, Vol. 33, No. 3 (March 1990), pages 297-310.

Claims 29, 30, 34, 35, 39 and 40 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Nielsen taken alone.

Rather than repeat the arguments of appellant or the examiner, we make reference to the brief and the answer for the respective details thereof.

#### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the

rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 29, 30, 34, 35, 39 and 40. Accordingly, we reverse.

Appellant has indicated that for purposes of this appeal the claims will stand or fall together in the following two groups: Group I has claims 29, 30, 34 and 35, and Group II has claims 39 and 40 [brief, page 4]. Consistent with this indication appellant has made no separate arguments with respect to any of the claims within each group. Accordingly, all the claims within each group will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Accordingly, we will only consider the rejection against claims 29 and 39 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

We consider first the rejection of claim 29 as unpatentable over the teachings of Nielsen. Nielsen was cited by appellant as representative of the prior art. Like the claimed invention, Nielsen teaches a method for providing hypertext link services in a data processing system. Nielsen teaches that a marker (footprint) can be displayed along with the link indicator to indicate that the information associated with the link has previously been visited. Nielsen also teaches that the marker can be gradually faded to indicate the amount of time which has passed since the link was last visited. Nielsen also teaches that the actual time since a link was last visited can be displayed whenever the link is actually visited.

Claim 29 recites that a date and time of a first utilization of the link is displayed upon the selective user actuation of a marker associated with the link without having to actually go to the new location. It is the position of the examiner that the faded version of the footprints in Nielsen implicitly reveals date and time information, and the selective display of such information upon user request would have been an obvious design choice because such modification "presents no novel or unexpected results and solves no stated problem" [answer, pages 4-5]. Appellant argues that Nielsen teaches away

from the selective display of date and time information without display of the link information because Nielsen only reveals specific time data when the link location is actually visited [brief, pages 5-6].

We are of the view that this record does not support the examiner's assertion that the modifications which must be made to Nielsen to arrive at the claimed invention are a matter of obvious design choice. The invention of claim 29 allows the user to selectively obtain specific information regarding date and time of a previous visit without having to revisit the site. Nielsen only gives a crude indication of a previous visit which must be interpreted by the user. Thus, one problem solved by appellant's invention is that the user does not have to be skilled in determining how much time corresponds to a given amount of fade in the marker. Although we recognize that there are similarities between the claimed invention and Nielsen, the claimed invention provides advantages for the user which simply are not suggested by the teachings of Nielsen. In fact, the modification of Nielsen to selectively display the faded markers would serve no purpose and would make Nielsen less useful.

Appeal No. 96-2021  
Application 08/004,016

Since we agree with appellant that this record does not support the examiner's rejection, we do not sustain the rejection of claim 29 and claims 30, 34 and 35 which are grouped therewith.

We now consider the rejection of claim 39 as unpatentable over the teachings of Nielsen. Claim 39 is essentially the same as claim 29 except that data concerning a most recent utilization of a link is displayed rather than data of the first utilization as recited in claim 29. Although the markers in Nielsen are more closely related to a most recent utilization rather than a first utilization, Nielsen still does not teach the selective display of a date and time for reasons noted above. The invention of claim 39 also provides advantages which are not suggested by the teachings of Nielsen. Therefore, we also do not sustain the rejection of claims 39 and 40 based on this record.

In summary, we have not sustained the examiner's rejection of the claims under 35 U.S.C. § 103. Therefore, the decision of the examiner rejecting claims 29, 30, 34, 35, 39 and 40 is reversed.

REVERSED



Appeal No. 96-2021  
Application 08/004,016

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
RICHARD TORCZON	)	
Administrative Patent Judge	)	

Andrew J. Dillon  
Felsman, Bradley, Gunter & Dillon, LLP  
Suite 350, Arboretum Point  
9505 Arboretum Boulevard  
Austin, TX 78759